

Congress of the United States
Washington, DC 20515

December 15, 2017

The Honorable Betsy DeVos
Secretary of Education
U.S. Department of Education
400 Maryland Ave, S.W.
Washington, D.C. 20202

Dear Secretary DeVos,

We write to express our support for efforts to improve school climate and address the persistent, disproportionate impact of exclusionary and aversive discipline practices on groups of historically marginalized students, such as students of color. We strongly urge you to maintain guidance on discipline and compliance with Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color or national origin. This guidance is crucial to ensuring that all students receive a safe, equitable, and high-quality education as well as helping schools and other recipients of federal financial assistance understand their obligations to develop and administer discipline policies in a nondiscriminatory manner.

In January 2014, the Department of Education and the Department of Justice jointly released a school discipline guidance package to assist states, districts, and schools to develop and implement practices and strategies to enhance school climates and that ensure discipline policies and practices comply with federal civil rights law. These documents equip educators with a set of tools to support student success in an environment free from discrimination. The Departments issued this guidance package in response to well-documented excessive and disproportionate use of suspension and expulsion.¹ In the 2013-14 school year, approximately 2.8 million students received one or more out of school suspensions from public schools according to the biennial Civil Rights Data Collection (CRDC). The CRDC also showed that African-American students were almost four times as likely to be suspended and nearly twice as likely to be expelled compared to white students, and students with disabilities were more than twice as likely to be subjected to exclusionary discipline measures compared to students without disabilities.²

A statewide study by the Council of State Governments and Public Policy Research Institute, *Breaking Schools' Rules*, further demonstrates the pervasiveness of exclusionary discipline practices for all students, while underscoring the particularly acute impact for vulnerable

¹ The issue of excessive and disproportionate discipline has been documented as early as the Children's Defense Fund's 1975 report, *School Suspensions: Are they helping children*. Other studies have only strengthened the body of evidence, such as *Out of School and Off Track: The Overuse of Suspensions in American Middle and High Schools* (2013) and *Race Is Not Neutral: A National Investigation of African American and Latino Disproportionality in School Discipline* (2011).

² <https://www.ed.gov/news/press-releases/persistent-disparities-found-through-comprehensive-civil-rights-survey-underscore-need-continued-focus-equity-king-says>

subgroups of students. According to the study, in Texas, which enrolls more than 10-percent of the nation's public school students,³ more than half of all students were suspended or expelled at least once between 7th and 12th grade, while only 3 percent of disciplinary actions "were for conduct for which state law mandates suspensions and expulsions." The study found significant racial disparities within discretionary disciplinary actions: "African-American students had a 31 percent higher likelihood of a school discretionary action, compared to otherwise identical white and Hispanic students." Meanwhile, "nearly three-quarters of the students who qualified for special education services [...] were suspended or expelled at least once." These disparate discipline practices can have severe academic consequences. According to the report nearly a third of students who were suspended or expelled repeated a grade at least once, while 10 percent dropped out.⁴ A 2017 study by the Legal Aid Justice Center found similar results in Virginia.⁵ While African-American students make up only 23 percent of public school enrollment in the Commonwealth, they account for nearly 60 percent of short-term suspensions -- with a suspension rate of nearly four times their white peers'. These numbers are even starker when examining African-American male students with disabilities, who were nearly twenty times more likely to be suspended than white female students without disabilities. The 2014 school discipline guidance package recognized these staggering disparities and provided educators with more effective alternatives that keep children in school and ensure a safe learning environment for everyone.

The 2014 school discipline guidance supports states in meeting their obligations under the Every Student Succeeds Act. State educational agencies are now statutorily required to describe in their state plan how they will support local education agencies (LEAs) to "improve school conditions for student learning including through reducing – (i) incidences of bullying and harassment; (ii) the overuse of discipline practices that remove students from the classroom; and (iii) the use of aversive behavioral interventions that compromise student health and safety" (Sec. 1111(g)(1)(C)). ESSA also encourages schools implementing a Title I schoolwide program to include "implementation of a schoolwide tiered model to prevent and address problem behavior" as a strategy to meet the needs of all students in their required plans (Sec. 1114(b)(7)(A)(iii)(III)).

While we hope recent reporting that the Department of Education is considering revoking or modifying this critical guidance on school discipline is inaccurate, we request that by January 5, 2018 you confirm your Department will not be revoking or modifying this critical guidance for upholding the civil rights of students under Title VI.

Part of the stated mission of the Department of Education is "fostering educational excellence and ensuring equal access."⁶ It is our opinion that the discipline guidance is fundamental to meeting this mission. We hope you will not undermine this mission by revoking or modifying the discipline guidance released in January 2014.

³ https://nces.ed.gov/programs/digest/d16/tables/dt16_203.20.asp

⁴ https://csgjusticecenter.org/wp-content/uploads/2012/08/Breaking_Schools_Rules_Report_Final.pdf

⁵ <https://www.justice4all.org/wp-content/uploads/2016/04/Suspended-Progress-2017.pdf>

⁶ <https://www2.ed.gov/about/overview/mission/mission.html>

Thank you for your attention to this critical issue. We look forward to your response.

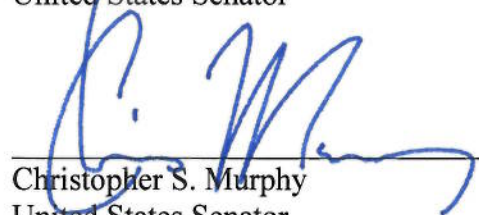
Sincerely,



Tim Kaine
United States Senator



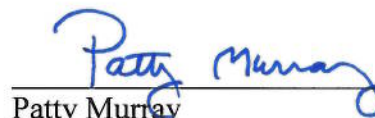
A. Donald McEachin
Member of Congress



Christopher S. Murphy
United States Senator



Robert C. "Bobby" Scott
Member of Congress



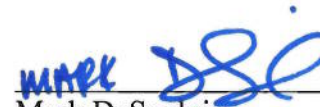
Patty Murray
United States Senator



John Lewis
Member of Congress



Sherrod Brown
United States Senator



Mark DeSaulnier
Member of Congress



Margaret Wood Hassan
United States Senator



Alan Lowenthal
Member of Congress



Richard J. Durbin
United States Senator



Pramila Jayapal
Member of Congress



Kamala D. Harris
United States Senator



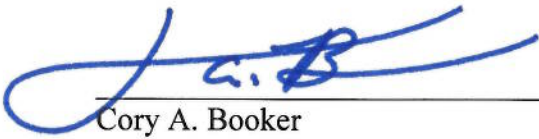
Vicente Gonzalez
Member of Congress



Michael F. Bennet
United States Senator



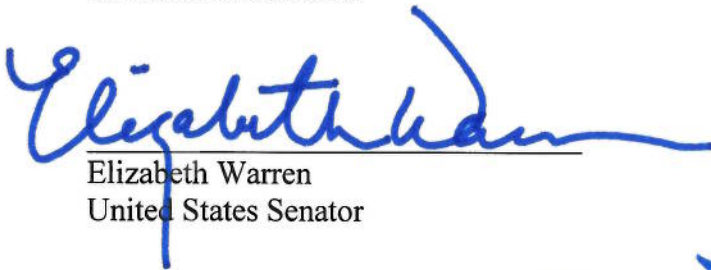
Cedric L. Richmond
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Cory A. Booker
United States Senator



Colleen Hanabusa
Member of Congress



Elizabeth Warren
United States Senator



Jamie Raskin
Member of Congress



Richard Blumenthal
United States Senator



James P. McGovern
Member of Congress



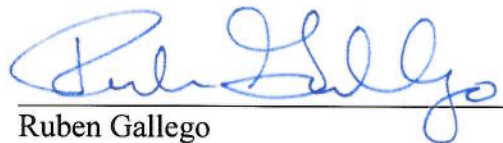
Mark R. Warner
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Sean Patrick Maloney
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Mazie K. Hirono
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Ruben Gallego
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Benjamin L. Cardin
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Anthony G. Brown
Member of Congress



Kirsten Gillibrand
United States Senator



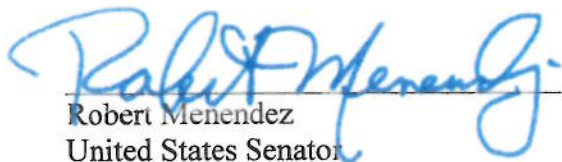
Carol Shea-Porter
Member of Congress



Robert P. Casey, Jr.
United States Senator



Bonnie Watson Coleman
Member of Congress



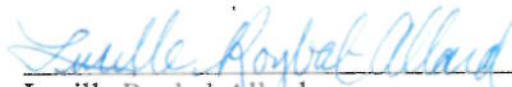
Robert Menendez
United States Senator




Adriano Espaillat
Member of Congress



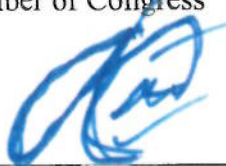
G.K. Butterfield
Member of Congress



Lucille Roybal-Allard
Member of Congress



Jerrold Nadler
Member of Congress



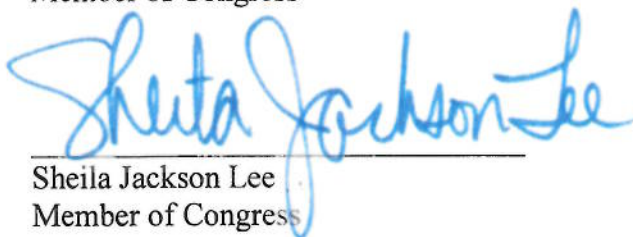
André Carson
Member of Congress



Eleanor Holmes Norton
Member of Congress



Danny K. Davis
Member of Congress



Sheila Jackson Lee
Member of Congress



Bobby L. Rush
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Gregory W. Meeks
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Al Green
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Gwen S. Moore
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Keith Ellison
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Jerry McNerney
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Barbara Lee
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Alcee L. Hastings
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